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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,432	07/21/2003	Joseph A. Brhel	09403.10063	1431
24382	7590	06/01/2005	EXAMINER	
JOSEPH S. HEINO, ESQ. DAVIS & KUELTHAU, S.C. 111 E. KILBOURN SUITE 1400 MILWAUKEE, WI 53202-6613			MORAN, KATHERINE M	
		ART UNIT		PAPER NUMBER
		3765		
DATE MAILED: 06/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/604,432	BRHEL	
	Examiner	Art Unit	
	Katherine Moran	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 July 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/21/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-10, 13-17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Griffiths (U.S. 4,802,243). Griffiths discloses the invention as claimed. Griffiths teaches an eye and ear protection apparatus which comprises an eye protective portion 24, and an ear protective portion in the form of a pair of opposing ear covering or ear muff members 18, means for attaching the eye protective portion to the ear covering members, and means for variably adjusting the position of the eye protective portion relative to the ear covering members, whereby the ear protective portion is functionally adapted to cover and protect a user's ears and the eye protective portion is functionally adapted to cover and protect a user's eyes. The eye protective portion 24 is a single piece of optically clear, visually transparent, resilient material and includes a frontal portion and at least one peripheral portion disposed distally symmetrically to each side of the frontal portion and being integrally formed with the frontal portion, such that the wearer's peripheral vision is not obstructed. The distally disposed peripheral portions including a slot 30 defined therewithin. An attachment and adjustment means comprising a flanged extension member 16 extends outwardly from each ear covering member, with the extension member being receivable within the slot

30 of the distally disposed peripheral portion, such that the eye protective portion is movable from a "down" position in which the eye portion protects the user's eyes, and an "up" position where the eye portion is away from, and not in front of, the user's eye area.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 5, 11, 12, 18, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffiths '243 in view of Robrahn et al. (Robrahn, U.S. 6,138,286). Griffiths discloses the invention substantially as claimed. However, Griffiths doesn't teach an eye protective member in the form of a single piece of optically clear polycarbonate resin including a color tint or a light filtering capacity. Robrahn teaches a lens 24 formed from polycarbonate resin and also including a light filtering capacity. Polycarbonate material is known for its elastic and memory properties, as well as for a high resistance to impact. The lens tint as disclosed in column 5 absorbs ultraviolet radiation and reduces the transmission of visible light to the eyes on bright sunny days. Therefore, it would have been known to one of ordinary skill in the art to modify Griffiths lens to form the lens from a polycarbonate resin with light filtering capacity in order to provide improved protection and wearing performance to the wearer.

Conclusion

5. The prior art made of record on the attached PTO-892, and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (703) 872-9306. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

May 26, 2005



Katherine Moran

Primary Examiner, AU 3765